

1 HONORABLE RONALD B. LEIGHTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LANCE SCHOENING,

Plaintiff,

v.

ROBERT M. MCKENNA, Attorney General
of the State of Washington,

Defendant.

Case No. C07-5611RBL

ORDER STAYING PROCEEDINGS

This matter is before the court on Plaintiff's motion to dismiss pursuant to Fed. R. Civ. P. 41. [Dkt.

#23] Plaintiff seeks dismissal because he cannot respond to discovery in this action without potentially violating his Fifth Amendment right against self incrimination.

Defendants apparently agree that "[Plaintiff] should not have to surrender one constitutional right in order to assert another." See *Wehling v. Columbia Broadcasting Sys.*, 608 F.2d 1084 (5th Cir. 1979). However, Defendants suggest that Plaintiff will destroy or otherwise alter evidence relevant to the current civil case before re-filing it, presumably at the end of whatever criminal proceeding he is concerned about.

Under the authority of *Keating v. Office of Thrift Supervision*, 45 F.3d 322 (9th Cir. 1995), the court addresses the concerns of both parties and will STAY this case pending resolution of the underlying criminal matter. If any party believes that some limited discovery (that which would not implicate Plaintiff's Fifth Amendment Privilege) is necessary in the meantime to avoid the loss of evidence or memory, they are invited to seek a relief from this stay in the form of a short motion. Otherwise, the court will await information that

1 the criminal matter is concluded and will at that time lift the stay.

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3 Dated this 21st day of October, 2008.

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Ronald B. Leighton

6 RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE

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